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FILED
DISTRICT COURT OF GUAM

SEP 03 2008 *PD*

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Clerk of Court

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DISTRICT COURT OF GUAM

TERRITORY OF GUAM

TCW SPECIAL CREDITS, et al.,

Plaintiffs,

vs.

F/V CHLOE Z, et al.,

Defendants.

Civil Case No. 96-00055

**NOTICE OF OBJECTION TO REPORT
AND RECOMMENDATION
REGARDING MR. MATOS'
JUDGMENT**

ROBERT MATOS,

Plaintiff-in-Intervention,

vs.

M/V CHLOE Z, et al.,

Defendants.

Pursuant to 28 U.S.C. §636(b)(1)(C) the vessel CHLOE Z hereby gives notice of one objection to the Report and Recommendation of the Magistrate issued in this matter. In the

Report and Recommendation, the Magistrate considered and made recommendations on many issues. In the interest of bringing this matter to conclusion, CHLOE Z does not object to any of the magistrate's recommendations, even those which were adverse to its position. CHLOE Z, however, does object in that one issue raised by the CHLOE Z on the pending motions was evidently overlooked by the Magistrate. That issue is whether prejudgment interest can be awarded for damage components which postdate the entry of the judgment. This issue was raised by CHLOE Z and is not mentioned in the Magistrate's Report and Recommendations. The impact of this sole issue on the current judgment is approximately \$260,000.

Concurrently with this objection, in the interest of efficiency, CHLOE Z has also submitted a Request for Reconsideration to the Magistrate covering this issue. What follows is a reiteration of that brief.

In the Matos matter there is a recommendation that prejudgment interest be awarded with the date of judgment as February 19, 1999. In his calculation, however, the Magistrate recommended prejudgment interest on the entire judgment amount, including those amounts for damages which accrued after February 19, 1999. In his decision of February 19, 1999, Judge Unpingco explicitly separated those components of the judgment which predated the judgment date and those components of the judgment which postdated the judgment date. Specifically, Judge Unpingco awarded \$210,058.73 for past wage loss and \$50,000.00 for past pain and suffering. See judgment of February 19, 1999 at pages 9-10. Both of these numbers were then reduced by 33% to account for plaintiff's comparative negligence. The remainder of the judgment amount was for future wage loss and future pain and suffering.

It is black letter law that prejudgment interest is not allowable with respect to losses that will accrue subsequent to judgment. As stated by the Ninth Circuit "Nor is prejudgment interest allowable with respect to losses that will accrue subsequent to judgment." *Columbia Brickworks v. Royal Insurance Company*, 768 F.2d 1066, 1068 (9th Cir. 1985) citing *Wyatt v. Penrod Drilling Company*, 735 F.2d 951, 955-56 nn. 3, 4 (5th Cir. 1984). See also *Pickle v.*

International Oil Field Divers, Inc., 791 F.2d 1237, 1241 (5th Cir. 1986), *Borges v. Our Lady of the Sea Corp.*, 935 F.2d 436, 444-45 (2nd Cir. 1994).

The appropriate sum upon which to calculate prejudgment interest, therefore, is \$174,238.86. (\$210,058.73 in past wage loss, plus \$50,000 for past pain and suffering reduced by 33%.) Because this prejudgment interest amount also impacts the post judgment interest recommendation, both prejudgment interest and post judgment interest must be recalculated.

Utilizing precisely the same interest rate, time periods, formula, and methodology as this Magistrate, the prejudgment interest calculations should be as follows:

<u>Time Period</u>	<u>Interest</u>	<u>Total Sum</u>
08-08-92 to 08-07-93	\$8,781.65	\$183,020.65
08-08-93 to 08-07-94	\$9,224.24	\$192,244.89
08-08-94 to 08-07-95	\$9,689.14	\$201,934.03
08-08-95 to 08-07-96	\$10,177.48	\$212,111.50
08-08-96 to 08-07-97	\$10,690.42	\$222,801.91
08-08-97 to 08-07-98	\$11,229.22	\$234,031.12
08-08-98 to 02-18-99	\$6,301.53	\$240,332.64

This yields a total prejudgment interest of \$66,093.68. When added to the judgment principal amount of \$621,514.50, this yields a total judgment value as of the date of judgment of \$687,608.19.

Utilizing precisely the same time periods, interest rate and methodology that Magistrate Manibusan utilized for post-judgment interest, yields the following results.

<u>Time Period</u>	<u>Interest</u>	<u>Total Sum</u>
02-19-99 to 02-18-00	\$31,519.96	\$719,128.13

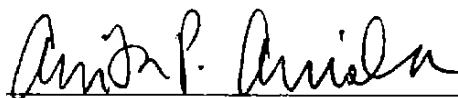
02-19-00 to 02-18-01	\$32,964.83	\$752,092.96
02-19-01 to 02-18-02	\$34,475.94	\$786,568.90
02-19-02 to 02-18-03	\$36,056.32	\$822,625.21
02-19-03 to 02-18-04	\$37,709.14	\$860,334.34
02-19-04 to 02-18-05	\$39,437.73	\$899,772.06
02-19-05 to 02-18-06	\$41,245.55	\$941,017.61
02-19-06 to 02-18-07	\$43,136.25	\$984,153.85
02-19-07 to 02-18-08	\$45,113.61	\$1,029,267.40
02-19-08 to 08-26-08	\$24,431.03	\$1,053,698.43

Interest would continue to accrue at the rate of \$132.33 per day.

This issue was raised in CHLOE Z's Memorandum of Points and Authorities in Opposition to Claimant's Motion to Establish Prejudgment Interest filed on November 1, 2006 at pages 10 and 11.

Respectfully Submitted this 3rd day of September, 2008.

ARRIOLA, COWAN & ARRIOLA



ANITA P. ARRIOLA, ATTORNEY FOR CHLOE Z

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2008, a true and correct copy of the foregoing was sent via U.S. Mail to:

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